

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

SONIA INGERMANSON,

Plaintiff,

vs.

JOANNE B. BARNHART,  
Commissioner of Social Security,

Defendant.

Civ. No. 05-6246-AA  
OPINION AND ORDER

AIKEN, Judge:

**INTRODUCTION**

Plaintiff, Sonia Ingermanson ("Ingermanson"), brings this action pursuant to the Social Security Act, 42 USC § 405(g), to obtain judicial review of a final decision of the Commissioner of the Social Security Administration ("Commissioner") denying her claim for Disability Insurance and Supplemental Security Income ("SSI") benefits. For the reasons set forth below, the decision of the Commissioner is reversed and this matter is remanded for the calculation of benefits.

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**PROCEDURAL BACKGROUND**

Ingermanson filed applications for DIB in 1995 and 1996. These claims were denied and there was no appeal. Ingermanson filed this application for benefits on July 2, 1997, alleging disability since November 28, 1994. Her application was denied initially and upon reconsideration. On March 4, 1999, a hearing was held before Administrative Law Judge ("ALJ") John J. Madden, Jr. In a decision dated October 21, 1999, the ALJ found Ingermanson was not entitled to benefits. The Appeals Council denied Ingermanson's request for review, making the ALJ's decision the final decision of the Commissioner.

Ingermanson sought judicial review of the Commissioner's decision. On August 27, 2002, United States Magistrate Judge John Jelderks issued Findings and Recommendations in which he found that the ALJ erred in rejecting the opinions of Drs. Fredrickson and Vindiver, Ingermanson's treating psychiatrists. Tr. 765-86.<sup>1</sup> Judge Jelderks recommended that their opinions be credited "as a matter of law." Tr. 782. He found that the ALJ's analysis as to whether Ingermanson met the criteria of a listed impairment, residual functional capacity, and drug and alcohol analysis were all flawed because the ALJ had improperly rejected the treating psychiatrists' opinions. Tr. 784-85. Judge

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<sup>1</sup>Citations are to the page(s) indicated in the official transcript of the record filed with the Commissioner's Answer.

Jelderks recommended that the case be remanded for the ALJ to re-evaluate steps two through five of the sequential analysis. The Findings and Recommendation was adopted by United States District Judge Garr M. King on September 24, 2002. Tr. 787-88. Judgment was entered remanding the case for further proceedings. Tr. 789.

On November 14, 2003, ALJ Madden held a second hearing. Tr. 1330-1407. In a decision dated May 24, 2005, the ALJ again found Ingermanson was not entitled to benefits. Tr. 697-715. The Appeals Council denied Ingermanson's request for review, making the ALJ's decision the final decision of the Commissioner. Ingermanson now seeks judicial review of the Commissioner's decision.

#### STANDARDS

A claimant is disabled if he or she is unable "to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which . . . has lasted or can be expected to last for a continuous period of not less than 12 months." 42 USC § 423(d)(1)(A). The initial burden of proof rests upon the claimant to establish his or her disability. *Roberts v. Shalala*, 66 F3d 179, 182 (9<sup>th</sup> Cir 1995), *cert. denied*, 517 US 1122 (1996). The Commissioner bears the burden of developing the record. *DeLorme v. Sullivan*, 924 F2d 841, 849 (9<sup>th</sup> Cir 1991).

The district court must affirm the Commissioner's decision if it is based on proper legal standards and the findings are supported by substantial evidence in the record as a whole. 42 USC § 405(g); see also *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9<sup>th</sup> Cir 1995). "Substantial evidence means more than a mere scintilla but less than a preponderance; it is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Andrews*, 53 F.3d at 1039. The court must weigh all of the evidence, whether it supports or detracts from the Commissioner's decision. *Martinez v. Heckler*, 807 F.2d 771, 772 (9<sup>th</sup> Cir 1986). The Commissioner's decision must be upheld, however, if "the evidence is susceptible to more than one rational interpretation." *Andrews*, 53 F.3d at 1039-40.

#### DISABILITY ANALYSIS

\_\_\_\_\_The ALJ engages in a five-step sequential inquiry to determine whether a claimant is disabled within the meaning of the Act. 20 CFR §§ 404.1520, 416.920. Below is a summary of the five steps, which also are described in *Tackett v. Apfel*, 180 F.3d 1094, 1098-99 (9<sup>th</sup> Cir 1999):

Step One. The Commissioner determines whether claimant is engaged in substantial gainful activity. If so, claimant is not disabled. If claimant is not engaged in substantial gainful activity, the Commissioner proceeds to evaluate claimant's case under step two. 20 CFR §§ 404.1520(b), 416.920(b).

Step Two. The Commissioner determines whether claimant has one or more severe impairment. If not, claimant is not disabled. If claimant has a severe impairment, the Commissioner proceeds to evaluate claimant's case under step three. 20 CFR §§ 404.1520(c), 416.920(c).

Step Three. Disability cannot be based solely on a severe impairment; therefore, the Commissioner next determines whether claimant's impairment "meets or equals" one of the impairments listed in the Social Security Administration (SSA) regulations, 20 CFR Part 404, Subpart P, Appendix 1. If so, claimant is disabled. If claimant's impairment does not meet or equal one listed in the regulations, the Commissioner's evaluation of claimant's case proceeds under step four. 20 CFR §§ 404.1520(d), 416.920(d).

Step Four. The Commissioner determines whether claimant is able to perform work he or she has done in the past. If so, claimant is not disabled. If claimant demonstrates he or she cannot do work performed in the past, the Commissioner's evaluation of claimant's case proceeds under step five. 20 CFR §§ 404.1520(e), 416.920(e).

Step Five. The Commissioner determines whether claimant is able to do any other work. If not, claimant is disabled. If the Commissioner finds claimant is able to do other work, the Commissioner must show a significant number of jobs exist in the

national economy that claimant can do. The Commissioner may satisfy this burden through the testimony of a vocational expert ("VE") or by reference to the Medical-Vocational Guidelines, 20 CFR Part 404, Subpart P, Appendix 2. If the Commissioner demonstrates a significant number of jobs exist in the national economy that claimant can do, claimant is not disabled. If the Commissioner does not meet this burden, claimant is disabled. 20 CFR §§ 404.1520(f)(1), 416.920(f)(1).

At steps one through four, the burden of proof is on the claimant. *Tackett*, 180 F.3d at 1098. At step five, the burden shifts to the Commissioner to show that the claimant can perform jobs that exist in significant numbers in the national economy. Id.

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#### **ALJ's DECISION**

At step one, the ALJ found Ingermanson had not engaged in substantial gainful activity since the alleged onset of her disability.

At step two, the ALJ found Ingermanson had the medically determinable severe impairments of a history of drug abuse, an affective disorder, bipolar disorder, personality disorder with borderline features, possible post traumatic stress disorder, asthma and hepatitis C. This finding is in dispute.

At step three, the ALJ found that Ingermanson's impairments, including drug and alcohol abuse, met the requirements of

Listings 12.04, 12.08, and 12.09. However the ALJ found Ingermanson's impairments without drug and alcohol abuse did not meet or medically equal the criteria of any listed impairments. This finding is in dispute.

The ALJ found that Ingermanson was not fully credible and retained the residual functional capacity to perform medium work, limited to simple, repetitive tasks without high production demands, and was unable to work in the presence of environmental irritants. This finding is in dispute.

At step four, the ALJ found that Ingermanson can not perform her past relevant work. This finding is not in dispute.

At step five, the ALJ found that Ingermanson can work at such jobs as bench assembler, marker II and laundry worker II, and therefore is not disabled.

### **DISCUSSION**

Ingermanson contends that the ALJ erred by: (1) failing to comply with this court's order to credit the opinions of Drs. Fredrickson and Vandiver; (2) rejecting the opinion of the examining psychologist; and (3) finding her capable of sustaining work. Because the first assertion is dispositive, the court need not address the latter two.

#### **I. Medical Evidence**

Born in 1962, Ingermanson was 36 years old at the time of the first hearing. She has a GED and training as a certified

nursing assistant. Tr. 57-58. She has worked as an odd job worker, a home care provider, and a housekeeper. Tr. 106.

The medical records submitted in this case accurately set out Ingermanson's medical history as it relates to her claim for benefits. The court has carefully reviewed the records, and the parties are familiar with them. Accordingly, the details of those medical records will not be recounted here.

## II. The ALJ Erred By Failing to Credit the Treating Psychiatrists

### A. Dr. Fredrickson's Opinion

Ingermanson began treatment at Marion County Mental Health ("MCMH") on June 19, 1997. Tr. 515-61. Richard Fredrickson, M.D., a MCMH psychiatrist, wrote on August 12, 1997:

Sonia is in the high-risk (Level III-Complex) program of the Case Coordination Team for medication management of the Long Term Behavior Health Services of Marion County. She has just recently been in psychiatric respite care for five days at our Greenway House facility on the Oregon State Hospital grounds. It is only in the last three months that Sonia has been mentally recovering from ten years on "the streets" as a homeless person. During that time she received both psychological and physical abuse. She is living with her family now....

Sonia's mental health counselor states that Sonia has the social age of a teenager. This does present a bar to employment for a thirty-four year old. We do not believe that she is able to engage in substantial, gainful activity. Objectively, her stream of thought content is upset by her command hallucinations and her constantly hearing voices. The voices talk to her and interrupt her concentration and pace. This also makes it hard for her to actively participate in group

activities. There are effects on social contacts and the ability to communicate with others. The client reports racing thoughts and pressured speech.

Sonia is a spend thrift and is not capable of managing her own funds. We have found no residual functional capacity and we state thashe is unable to engage in sedentary work as defined by the Dictionary of Occupational Titles Rev.4th Ed.

As we talked about on the phone, we cannot help you with the period 1991 to 1996. We enclose the Comprehensive Assessment of 6/24/97 when she was first seen and the progress note of 7/29/97 when she was last seen.

Sonia's disability will last longer than twelve months. She is currently experiencing voices, depression, suicidal ideation and anxiety.

Tr. 515-16.

Dr. Fredrickson stated that his diagnosis was Bipolar I Disorder, Most Recent Episode Mixed, Severe with Psychotic Features; Polysubstance Dependence; Antisocial Personality Traits; and Borderline Personality Traits. He assessed a Global Assessment of Functioning ("GAF") score of 45-50<sup>2</sup>. *Id*

B. Dr. Vandiver's Opinion

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<sup>2</sup> The GAF scale is a tool for "reporting the clinician's judgment of the individual's overall level of functioning." American Psychiatric Ass'n., Diagnostic and Statistical Manual of Mental Disorders 32 (4<sup>th</sup> ed. 2000)). It is essentially a scale of zero to 100 in which the clinician considers "psychological, social, and occupational functioning on a hypothetical continuum of mental health-illness," not including impairments in functioning due to physical or environmental limitations. *Id* at 34. A Global Assessment of Functioning ("GAF") score between 41 and 50 indicates "Serious symptoms (e.g. suicidal ideation, severe obsessional rituals, frequent shoplifting) or any serious impairment in social, occupational or school functioning (e.g., no friends, unable to keep a job)." *Id* at 32.

Robert Vandiver, M.D., a psychiatrist with Linn County Mental Health examined Ingermanson on August 26, 1998. Dr. Vandiver found that Ingermanson suffered from a schizo-affective disorder, a combination of affective symptoms and psychotic symptoms. Tr. 574. Dr. Vandiver noted that "the drug abuse that she has been involved in has probably played a role in exaggerating the severity of her symptoms, but she is clean and sober now and certainly a good candidate for remaining on medicine, in fact, I suspect her Risperdal dosage is inadequate." *Id* He assigned a GAF of 24 because she was receiving command hallucinations and responding to some of them.

#### C. The ALJ's 1999 Decision

In his first decision in this matter the ALJ noted Dr. Fredrickson's opinion and rejected it because (1) Fredrickson had stated that Ingermanson had been living "on the streets" when in fact she had been living with a series of male friends; (2) that Ingermanson had been in respite care signified a possible drug and alcohol relapse; (3) Fredrickson failed to mention drug and alcohol abuse; (4) Fredrickson hadn't seen Ingermanson for two weeks; and (5) Fredrickson's opinion conflicted with the same day note written by another staff person stating that Ingermanson was clean, her medications were working, and she was going on a road trip with a friend. Tr. 25-26.

The ALJ implicitly rejected Dr. Vandiver's opinion by failing to address it in his decision.

D. This Court's August 2002 Opinion

This court found that because Dr. Fredrickson's opinion was controverted by other medical evidence, the ALJ had to articulate specific, legitimate reasons to reject it, citing *Magallanes v. Bowen*, 881 F2d 747,751 (9<sup>th</sup> Cir 1989). This court specifically found that each of the ALJ's reasons outlined above was not legitimate. This court found that the ALJ erred in rejecting the opinions of Drs. Fredrickson and Vandiver, and ordered them "credited as a matter of law." Tr. 782. These Findings and Recommendation were adopted by Judge King on September 24, 2002, and Judgment was entered remanding this case for further proceedings. Tr. 788-89.

E. Dr. Vandiver's September 2003 Letter

In response to a request from counsel, Dr. Vandiver wrote:

You asked whether I concur with the opinions expressed by Dr. David Sweet's evaluation of August 28 of 2001<sup>3</sup>.

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<sup>3</sup> David N. Sweet, Ph.D., conducted a Comprehensive Psychological Evaluation of Ms. Ingermanson on August 23, 2001. Tr. 1071-77. Dr. Sweet conducted a clinical interview and administered the Wechsler Adult Intelligence Scale - Third Edition ("WAIS-III"). He attempted to administer the Minnesota Multiphasic Personality Inventory - 2, but "[t]his woman has low cognitive abilities and poor comprehension and was not able to complete that test...[t]he test is not normed for people who function in the Mild range of Mental Retardation, as does Ms. Ingermanson." Tr. 1071. The WAIS-III score full scale IQ of 59 is the mild range of mental retardation. Dr. Sweek diagnosed Post-Traumatic Stress Disorder, Chronic; Bipolar Disorder, most recent episode depressed, moderate; Polysubstance Dependence, in early remission, by her report; Mild Mental Retardation; Personality Disorder, NOS, with Characteristics of Bipolar and Dependent Personality Disorders, and assessed a GAF of 50. Dr. Sweek stated that "this is a

I certainly do. I also agree that the findings would not be any different, irrespective of drug or alcohol abuse. Dr. Sweet has fairly perfectly described Sonia. In my more recent work with her I do not believe she has been involved in any substance abuse and she has not changed in presentation in any way whatsoever.

Tr. 1249.

#### F. The ALJ's March 2005 Decision

After remand for further proceedings and a second hearing, the ALJ stated:

Regardless of the District Court's directive, the Administrative Law Judge does not find either of these opinions to be entitled to controlling or great weight in the context of the full record, including the expert opinions of the two impartial medical experts in this case. Dr. Fredrickson did not even consider the role of substance abuse in rendering his opinion, a factor which is pivotal in this case, and should have been considered in that the claimant was a "dual diagnosis" patient (drugs in combination with other mental impairments) of Dr. Fredrickson. Notably, the Administrative Law Judge concurs with a finding of disability when substance abuse is present as a material contributing factor. Relative to Dr. Fredrickson's assessment of "no residual functional capacity," she would need to be institutionalized, but Dr. Fredrickson did not even suggest this. His statement that "she is unable to engage in sedentary" residual functional capacity, although in this particular case, exertional limitations do not exist, and a "sedentary" residual functional capacity

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woman with multiple, chronic problems that are unlikely to be resolved in the near future. She experiences depression, anger, anxiety and frustration. Her problem-solving ability is limited and her judgment has been poor. These problems have been compounded by alcohol and drug use over the years. She claims to be clean and sober now, but only sought treatment because she was afraid she would lose disability funds. Ms. Ingermanson demonstrates problems with attention, concentration and memory. It will be difficult for her [to] follow through on tasks and she tends to withdraw from people and has difficulty forming appropriate relationships." Tr. 1076.

does not arise from a mental condition, such that Dr. Fredrickson's statement is in effect is [sic] nonsensical and not probative, though obviously intended to advocate for disability, as vs. presentation of objective medical opinion.

Tr. 710.

As to Dr. Vandiver's opinion, the ALJ stated:

...it appears that the opinion...was issued at the time of his first personal contact with the claimant, such that there was indeed no longitudinal or continuing patient-doctor relationship which is the primary basis for giving greater and controlling weight....Notably, in the August 26, 1998 chart note, Dr. Vandiver essentially recited the claimant's subjective complaints, which while if may be factually probative, does not constitute an "opinion" as that term is generally defined. Regardless, the [ALJ] accepts the statement of Ms. Ingermanson's subjective complaints to Dr. Vandiver as a matter of law. However, credibility is another issue; those subjective complaints during the 30 minute visit which he accepted at face value, the [ALJ] does not. Interestingly, even Dr. Vandiver commented in his own chart notes that "certainly the drug abuse that she has been involved in has probably played a role in exaggerating the severity of her symptoms" [citation omitted], yet he failed to address any residual effects of recent drug use. It is additionally noted that shortly thereafter, the claimant's primary care physician Dr. Gallup noted that the claimant told him that she could not work due to bipolar disorder, but that "I have never seen her acutely depressed or being manic" even though "she stated she was too scared to work because she would walk off the job, does not want to be stressed by working" [citation omitted].

In a later letter solicited from Dr. Vandiver in September 2003, the claimant's representative sought to "piggyback" Dr. Vandiver's endorsement of disability onto other medical opinions of record; Dr. Vandiver was asked to and proceeded to critique the various medical opinions. In sum, Dr. Vandiver agreed with Dr. Sweet's evaluation and endorsement of

disability, while he disagreed with the reports of both Dr. Anderson and Dr. Higgins-Lee to the extent that they were adverse to the claimant. He also purported to dispose of the DAA materiality issue by summarily stating that "I also agree that the findings would not be any different irrespective of any alcohol or drug abuse" [citation omitted]. Although the [ALJ] has considered this opinion, it is clearly a form of patient advocacy from a physician with a patient-doctor relationship who has written a letter essentially repairing the failings of his prior opinion; the letter begins "I hope you are successful in establishing benefits for Sonia." This bias is also reflected in his endorsement of Dr. Sweet's finding of mental retardation, which is contradictory to his own prior chart note that states "I would assess her intelligence as being at least average" [citation omitted], an observation which is consistent with Ms. Ingermanson's GED education and vocational accomplishment of becoming a certified nurse's aide. Again, both Dr.

Fredrickson's and Dr. Vandiver's opinions are contradicted by the more objective and impartial opinion of Dr. Dragovich, who unlike these two physicians, was privy to the entire documentary medical evidence, enabling her to form a more complete and objective depiction of the record as is required of an impartial medical expert, as addressed below.

Tr. 710-11.

First, the ALJ rejects Dr. Fredrickson's opinion for failure to address substance abuse in his opinion. However, Dr. Fredrickson was clearly aware of Ingermanson's substance abuse as he specifically diagnosed polysubstance abuse. Moreover, this court specifically rejected this argument four years ago:

The ALJ next states that though "Dr. Fredrickson makes a case for the claimant by failing to mention her drugs and alcohol usage, the file is replete with evidence that her psychological problems stem from her substance abuse." Tr. 25. The ALJ misses the point. It does not matter where plaintiff's psychological problems stem from, but rather whether they still exist *in the absence of drug and alcohol abuse. See Sousa v.*

*Callahan*, 143 F.3d 1240, 1245 (9<sup>th</sup> Cir 1998). Since the record shows plaintiff's symptoms exist in the absence of DAA, this is not a legitimate reason for rejecting Dr. Fredrickson's opinion.

Tr. 780 (Emphasis in original).

Second, the ALJ rejects Dr. Fredrickson's opinion that Ingermanson has "no functional residual capacity" because, according to the ALJ, that means she would need to be institutionalized. The ALJ rejected Dr. Fredrickson's finding that Ingermanson could not perform a sedentary job, noting that Ingermanson's limitations are non-exertional. The ALJ concluded that Dr. Fredrickson's opinion was "nonsensical and not probative" and simply advocacy. Tr. 710. A fair reading of Dr. Fredrickson's opinion is that he believed Ingermanson was unable to work at any job, even a sedentary job, because of her mental condition, including the distraction of her command hallucinations. Tr. 515.

The Commissioner argues that the ALJ correctly rejected Dr. Fredrickson's opinion as advocacy, citing *Matney v. Sullivan*, 981 F.2d 1016 (9<sup>th</sup> Cir 1992). However, the *Matney* court found an examining physician properly accorded little weight when he had examined the claimant one time, produced a brief report, the diagnosis was based primarily upon the medical history and subjective complaints of the claimant, and the physician "had agreed to become an advocate and assist in presenting a

meaningful petition for Social Security benefits." *Matney*, 981 F.2d at 1020. In this case, Ingermanson was seen by staff members of MCMH, supervised by Dr. Fredrickson, at least 25 times between her initial assessment on June 19, 1997, and August 12, 1997, when Dr. Fredrickson opined that she was unable to engage in substantial gainful activity. Tr. 517-61. On July 22, 1997, MCMH staff noted that they had requested a "6 yr psych history," apparently from a source other than Ingermanson. Tr. 544. Dr. Fredrickson had a great deal of information other than Ingermanson's subjective complaints upon which to form an opinion. The ALJ has failed to articulate specific, legitimate reasons to discredit Dr. Fredrickson's opinion.

As to Dr. Vandiver's opinion, the ALJ found he was not entitled to treating psychiatrist status because the August 1998 chart note occurred during the doctor's first contact with Ingermanson. A psychiatrist can be considered a treating source when he prescribes and monitors medication but leaves most of the direct patient contact to others within a treatment team. *Benton v. Barnhart*, 331 F.3d 1030, 1039 (9<sup>th</sup> Cir 2003). Dr. Vandiver continued to treat Ingermanson and had had substantial contact with her when he wrote his September 2003 letter. Tr. 1180-82; 1201; 1254-66; 1303-04; 570-72. Dr. Vandiver continued to treat Ingermanson from June 2002, when her GAF was assessed as 40, through November 2004. Tr. 1164-1306. At her annual assessment

in March 2004 she was assigned a GAF of 39. Tr. 1311-14. Dr. Vandiver recorded many instances of confusion and difficulty thinking clearly. Tr. 574, 1180, 1254, 1301, 1303, 1323. His September 2003 opinion was not based solely upon Ingermanson's reports and Dr. Vandiver recognized that she was not a reliable reporter.

The ALJ rejected Dr. Vandiver's opinion because he failed to articulate any residual effects of drug use. This argument is not a legitimate reason to reject Dr. Vandiver's opinion, just as it was not a legitimate reason to reject Dr. Fredrickson's opinion.

The ALJ rejected Dr. Vandiver's September 2003 opinion as advocacy. The fact that he wrote a letter supporting a finding of disability does not constitute evidence that the doctor had abandoned his professional objectivity. The ALJ failed to articulate specific, legitimate reasons to reject Dr. Vandiver's opinion.

### III. REMAND FOR PAYMENT OF BENEFITS IS APPROPRIATE

The decision whether to remand for further proceedings or for immediate payment of benefits is within the discretion of the court. *Harman v. Apfel*, 211 F.3d 1172, 1178 (9<sup>th</sup> Cir.), cert. denied, 531 U.S. 1038 (2000); *Benecke v. Barnhart*, No. 03-15155, 2004 WL 1770096 (9<sup>th</sup> Cir. Aug. 9, 2004). The court's decision turns on the utility of further proceedings. A remand for an

award of benefits is appropriate when no useful purpose would be served by further administrative proceedings or when the record has been fully developed and the evidence is not sufficient to support the Commissioner's decision. *Rodriguez v. Bowen*, 876 F.2d 759, 763 (9<sup>th</sup> Cir. 1989).

The Ninth Circuit has established a three-part test "for determining when evidence should be credited and an immediate award of benefits directed." *Harman v. Apfel*, 211 F.3d at 1178. The court should grant an immediate award of benefits when:

(1) the ALJ has failed to provide legally sufficient reasons for rejecting such evidence, (2) there are no outstanding issue that must be resolved before a determination of disability can be made, and (3) it is clear from the record that the ALJ would be required to find the claimant disabled were such evidence credited. *Id* The second and third prongs of the test often merge into a single question: Whether the ALJ would have to award benefits if the case were remanded for further proceedings.

See *id.* at 1178 n.2.

The ALJ improperly rejected the evidence establishing the severity of Ingermanson's mental limitations. If credited, the doctors' testimony establish that Ingermanson could not work on a regular and sustained full-time basis by the time of Dr. Fredrickson's opinion on August 12, 1997, and therefore, she was disabled. The ALJ's determination that Ingermanson was capable of performing work is not supported by substantial evidence.

The court, therefore concludes this matter should not be remanded for further proceedings. See *Schneider v. Comm'r*, 223

F.3d 968 (9<sup>th</sup> Cir. 2000). See also *Reddick v. Chater*, 157 F.3d 715, 729 (9<sup>th</sup> Cir. 1998) ("We do not remand this case for further proceedings because it is clear from the administrative record that Claimant is entitled to benefits.")

**CONCLUSION**

For these reasons, the Commissioner's decision is reversed and remanded pursuant to sentence four of 42 USC § 405(g) for the calculation and award of benefits.

IT IS SO ORDERED.

Dated this 13 day of September 2006.

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/s/ Ann Aiken  
Ann Aiken  
United States District Judge